(1)

Supreme Court, U.S.
FILED

01 272 JUN - 4 2001

OFFICE OF THE CLERK

No._____

In The

SUPREME COURT OF THE UNITED STATES

STEPHEN SIMON,
Petitioner

v.

BELWITH INTERNATIONAL INC. EMPLOYEE BENEFIT PLAN, BABCOCK INDUSTRIES INC. GROUP HEALTH PLAN, BABCOCK INDUSTRIES INC., FKI INDUSTRIES INC. ELAINE DRURY, individually and as Plan Administrator, JANET HOLTON, individually and as Plan Administrator, GARRIE WARREN, individually and as Plan Administrator

Respondent(s)

On Petition For a Writ of Certiorari to
To The United States Court of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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26 pp

QUESTION(S) PRESENTED FOR REVIEW

I. Whether an assignment of benefits and/or assignment of cause of action to a healthcare provider from a "participant" of a Employee Retirement Income Security Act ("ERISA") health and welfare plan and who [provider] subsequently reassigns to a "creditor" with UCC holding who [creditor] subsequently brings a legal action individually and as assignee of assignor [provider] and who [creditor][Plaintiff/Appellant] subsequently brings an legal action against an ERISA plan for denial of ERISA benefits pursuant to 29 U.S.C. § 1132 alleging either vested interest, colorable claim, derivative standing and/or beneficiary status is sufficient to proceed with such claims for relief and with standing to sue in the United States District Court?

II. Whether the defined term "beneficiary" pursuant to 29 U.S.C. § 1002(8) wherein it refers to the term "designate" and since according to Black's Law Dictionary is synonymous with Black's Law defined term "appoint" that in turn is synonymous or interchangeable with Black's Law defined term "assign" and, as such, does an assignee with assignment of benefits and assignment of cause of action so designated by a "participant" of an ERISA health and welfare employee benefit plan and based upon the plain natural language reading of the Black's Law defined terms "beneficiary", "appoint", and "assign" constitute congressional intent that such similarly situated "assignees" are equivalent to "beneficiaries" and, as such, are enumerated parties pursuant to 29 U.S.C. § 1002(8) with standing to sue in the United States District Court?

III. Whether the defined ERISA term "beneficiary" pursuant to 29 U.S.C. § 1002(8) wherein it states, "...or by the terms of the employee benefit plan...or may become entitled to a benefit thereunder" and when any given ERISA health and welfare employee benefit plan does not prohibit or otherwise allow for assignability or to the extent assignment(s) are allowed or silent under the terms thereunder, then can such an assignee [Plaintiff/Appellant] with a valid assignment(s) of either assignment of benefits and/or an assignment of cause of action proceed as a "beneficiary" based on the plain natural reading of the statute with standing to sue and is consistent with congressional intent?

IV. Whether a holding the U.S. District Court in dismissing of a complaint for lack of standing to sue for denial of benefits of a ERISA health and welfare plan when the Plaintiff/Appellant is an ultimate assignee of the "participant" of the ERISA plan with valid assignments of accounts receivable and assignment of cause of action and who has properly plead a vested interest, colorable claim, derivative standing, and/or beneficiary status arising out of creditor status with UCC filings and/or purports to be a beneficiary by assignment, constitutes a violation of the United States Constitution including but not limited to Article III by depriving due process to the Courts for redress including preemption of state law or common law unlawful taking of private property without due process to the Courts for redress and considering ERISA preemption of state law and/or common law causes of action that collectively constitute the unlawful taking of private property without due process?

V. Whether the federal courts have sufficiently established a broad enough "judicial exception" by only allowing healthcare providers standing to sue against an ERISA employee health and welfare plan while depriving other qualified citizens who have vested rights and interests individually and/or by assignment to seek redress for their respective damages and losses in the federal courts after statutory preemption of state law causes?

VI. Whether the federal courts establishment of judicial exception of "healthcare providers" granting derivative standing to sue under present federal common law is limited to healthcare providers who actually provided the services as opposed to healthcare providers and/or professionals who obtained assignments from those providers and in contrast to attorneys who can openly trade and share commissions amongst themselves without any restrictions and/or prohibitions?

VII. Whether the United States District Court retains jurisdiction of an ERISA cause of action against a health and welfare employee benefit plan irregardless of whether the Plaintiff was deemed to be the "real party in interest" pursuant to Fed.R.Civ.P. 17(a) and otherwise deprive all parties of equitable redress including the actual real party in interest while subjecting all of the Plaintiff and/or real parties in interest to res judicata and/or collateral estoppel doctrine?

VIII. Whether or not the U.S. District Court was clearly erroneous based upon that Court's final order and opinion wherein it made reference and inferences to

other court's holdings as the apparent basis for that court's dismissal with prejudice and without specifying the legal basis for such holding(s) in the opinion and order?

IX. Whether or not the U.S. District Court's holding denying standing to sue and/or standing to bring an ERISA cause of action constitutes a form of civil rights discrimination and/or violations of constitution including due process and access to the federal courts to redress actual disputes brought by pro se litigants as a class as opposed to members of the respective bar associations by restraining such pro se litigants access to the courts under the guise of federal common law despite the apparent inconsistency with Congressional intent with respect to assignments of health and welfare plans?

X. Did the U.S. Sixth Circuit Court of Appeals improperly rely upon the U.S. Ninth Circuit Court of Appeals decision in ***Simon vs. Value Behavioral Health Inc. et al,*** 208 F.3d. 1073 (9th Cir. 2000) while overlooking or ignoring conflicting case law within the Ninth Circuit that would have otherwise given good cause to reverse and/or remand to the lower court including but not limited to ***Davidowitz vs. Delta Dental Plan Inc.***, 946 F.2d 1476 (9th Cir. 1991) and other Supreme Court holdings including but not limited to ***Fentron Industries et al vs. The National Shopmen Pension Fund et al,*** 674 F.2d 1300, 1982 U.S. App. LEXIS 19924 and Haynes vs. Kerner et al, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 653 (1972)?

XI. Whether or not the U.S. District Court abused judicial

discretion by failing or refusing to allow Plaintiff/Appellant even one single opportunity to amend the complaint and/or to include other causes of action under federal and/or Michigan state law and/or an opportunity for other indispensable and/or real parties in interest to assert and/or allege vested rights and/or additional claim(s) or causes of action?

XII. Whether or not the U.S. District Court and/or the Sixth Circuit Court refused or failed to address Plaintiffs' pleadings on the face of it at this stage of the pleading and/or misstate and/or distort the actual facts as alleged in Plaintiff/Appellants' pleadings and in some instance(s) supported by the record on appeal?

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Sixth Circuit is reported at *Stephen Simon vs. Bellwith International Inc. et al,* 2001 WL 111651.

The opinion of the United States District Court for the Western District of Michigan is reported at *Stephen Simon vs. Bellwith International Inc. et al,* Case No. 99 C 5589.

STATEMENT OF JURISDICTION

The date on which the United States Sixth Circuit Court of Appeals decided my case was on January 31st, 2001 .

A timely petition for rehearing and rehearing en banc was denied by the United States Sixth Circuit Court of Appeals on the following date: May 30th, 2001, and a copy of the order denying rehearing appears at Appendix B.

A timely petition for stay of the mandate was denied by the United States Sixth Circuit Court of Appeals on the following date: April 25th, 2001 and a copy of the order appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

15 U.S.C. § 12 (RICO)
18 U.S.C. § 1961
18 U.S.C. § 1961(3)
18 U.S.C. § 1961(4)
18 U.S.C. § 1962
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28 U.S.C. § 1291
28 U.S.C. § 1331
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29 U.S.C. § 1001(b)
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Fed.R.App.P. 35(c)
RICO § 2(b)

STATEMENT OF THE CASE

This is a case in where the Sixth Circuit Court of Appeals affirmed the U.S. District Court's holding that the Plaintiff lacked standing to bring an ERISA action and dismissed the complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

Whereas, the Sixth Circuit principally relied upon the U.S. Ninth Circuit holding in *Simon vs. Value Behavioral Health Inc.*, 208 F.3d. 1073 (9th Cir. 2000), and has now established a split amongst the circuits and, as such, is ripe for consideration before the Supreme Court of the United States. Additionally, the Sixth Circuit has failed or refused to acknowledge that the Plaintiff/Appellant has emphatically stated and plead that he is entitled to assert assignment based on the terms and conditions of that ERISA plan. Instead the Sixth Circuit totally ignores Plaintiff/Appellants' assertions and/or concludes contrary to all of Plaintiff/Appellants' pleadings in both the lower court and Sixth Circuit Court.

Whereas, Plaintiff/Appellant and now the Petitioner

contends that given the Sixth Circuit Court's holding and compared with the actual facts of Plaintiff/Appellants' pleadings, that the appellate order should not have been affirmed since that court's order is inconsistent with what Plaintiff/Appellant has plead and argued before the respective Courts and has further distorted the record with untrue fact(s) on the face of it including the Sixth Circuit order dated March 30th, 2000 wherein it states in relevant part, "*...we reject Simon's argument that the District Court erred by not permitting him to amend the complaint. A review of the record shows that the District Court permitted Simon to file one amended complaint...*" This is simply not true since the First Amended Complaint was filed without the Court's intervention prior to serving any of the Defendants pursuant to Fed. R. Civ. P. 15(a). (See U.S.D.C. Dckt. #4).

Petitioner further asserts that the record will clearly show that the U.S.D.C.J. and the Sixth Circuit Panel unreasonably and unfairly ruled against the Plaintiff.

I also believe that the Supreme Court Justices will determine that justice has not been served in this instant matter upon review of the pleadings and other issues raised herein as they attempt to answer these and other questions. The Petitioner also trusts that the Supreme Court Justices will grant further "*authority*" so that the Petitioner's ERISA standing to sue can be established as a matter of federal common law and consistent with other related holdings amongst the Circuit Courts. (See *T.J. vs. Connecticut General Life Insurance Company*, 924 F.2d 698 (7th Cir. 1991); *Central States Pension Fund vs. Gerber Truck Service Inc.*, 870 F.2d 1148 (7th Cir. 1989) en banc; and *Davidowitz vs. Delta Dental Plan Inc.*, 946 F.2d 1476 (9th Cir. 1991)).

The Petitioner also remains confident that given a fair and reasonable opportunity to replead all of the causes of action and to supplement same with evidence obtained

through discovery that he could and would proceed to the merits of the case. Instead, this is definitely a case that was prematurely and unjustly aborted at the pleading stage.

This is also a case where the District Court has not extended liberal construction to pro se pleadings or other similar applications. Therefore, I firmly believe that the Supreme Court will agree that justice, fairness, and reasonableness have not triumphed in this case.

Whereas, should the Supreme Court refuse to grant petition for writ of certiorari the Sixth Circuit Court of Appeals ruling on Petitioner's ERISA standing to sue and/or lacking an ERISA cause of action would significantly narrow the scope of the federal common law consistent with expanded rulings on ERISA standing to sue and, as such, would establish an alarming and conflicting precedent. In addition, an adverse ruling at this juncture would encourage those Respondents to continue their unlawful activities that have heretofore significantly restrained and adversely impacted the entire mental health profession along with tens of thousands of patients who are participants and beneficiaries of ERISA plans while simultaneously enabling those co-conspiring Respondents to escape justice.

The Petitioner greatly appreciates the opportunity that our United States judicial system affords litigants to appeal unjust, unfair, and adverse rulings and is now hopeful that this Supreme Court Justices of the United States Supreme Court will find favor in Petitioner's appeal and in the preservation of justice for one and for all.

The Petitioner looks forward to the appointed time and place to personally appear for the purpose of oral presentation before the Supreme Court Justices of the United States Supreme Court in God speed.

REASONS FOR GRANTING THE PETITION

Petitioner is aware of the odds of the United States Supreme Court granting a Petition for Writ of Certiorari that rarely occurs except in cases of such imperative public importance and/or conflict amongst the circuits. In *Simon vs. Bellwith*, the U.S. District Court's denial of Plaintiffs' standing to sue and/or state an ERISA cause of action and the U.S. Sixth Circuit Court's aforementioned of same without regard to Plaintiffs' pleadings, creates a schism amongst federal common law or a conflict amongst the circuits and/or interconflict within the circuits by and through conflicting rulings. (See *Simon vs. Value* as opposed to *Simon vs. Davidowitz*. Therefore, this is a case that the Supreme Court may likely consider based upon the conflict amongst the circuits and/or intra circuit conflict in with respect to the variance of holdings as to the issues of standing to sue and/or state an ERISA cause of action.

CONCLUSION

The Petitioner has alleged in the Lawsuit that he, as an individual and the ultimate assignee of assignors and, as such, has standing to bring those causes of action including the ERISA claims.

In sum, the Supreme Court has been summoned to determine whether or not Petitioners' collective arguments of law and contentions of facts, as set forth herein, are sufficient to vacate, reverse, and/or remand for further proceedings. This is also a case that could be considered for summary adjudication.

Secondly, the Petitioner has suffered significant personal financial losses and damages to his twenty (20) year

career in the mental health field. Whereas, this Lawsuit constitutes the Petitioner's only available legal remedy for equitable and injunctive relief and, as such, Petitioner prays for justice and an opportunity to present his evidence before the United States Supreme Court so that justice may prevail in this matter.

The Supreme Court Justices have been assigned the authority to oversee this judicial process and, as such, "stands in the shoes" of the proverbial watchman and as "shepherds" over the flocks.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Appendix A

FILED JAN 31 2001
LEONARD GREEN,
Clerk

No. 00-1680

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

STEPHEN SIMON, individually and as ultimate assignee of Humanistic Mental Health Foundation,
Plaintiff-Appellant,

BELWITH INTERNATIONAL INC., Employee Benefit Plan; BABCOCK INDUSTRIES INC., Group Health Plan; ELAINE DRURY, individually and as Plan Administrator; JANET HOLTON, individually and as Plan Administrator; FKI INDUSTRIES INC, GARY WARREN) individually and as Plan Administrator; BABCOCK INDUSTRIES INC.,
Defendants-Appellees.

) Sixth Circuit Rule
) 28(g) limits citation to
) specific situations.
) Please see Rule 28(g)
) before citing in a
) proceeding in a court
) in the Sixth Circuit
)
) If cited, a copy must be
) served on other parties
) and the Court. This
) notice is to be
) prominently displayed
) if this citation is
) reproduced.
)
) ORDER
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Appendix A

BEFORE: WELLFORD, RYAN, and SUHRHEINRICH, Circuit Judges

Stephen Simon, proceeding pro se, appeals a district court judgment dismissing the complaint filed pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. This case has been refereed to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Simon filed suit as an individual and as assignee of Humanistic Mental Health Foundation ("Humanistic"), seeking to recover money from the Belwith employee benefit plan ("plan") for medical services provided by Humanistic in 1991 to a plan participant known as "S.M." S.M. had executed an assignment of benefits to Humanistic, which in turned assigned its claim against the plan to Simon. The district court found that Simon lacked standing to bring an ERISA action and dismissed the complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

In his timely appeal, Simon reasserts his claim. He also argues that the district court erred by dismissing his state and common law claims and that the district court should have permitted him to amend the complaint.

Upon de novo review, we conclude that the district court's judgment must be affirmed for the reasons stated in the district court's opinion. *See* Fed. R. Civ. P. 12(b)(6); *Wright v. MetroHealth Med. Ctr.*, 58 F.3d 1130, 1138 (6th Cir. 1995). The district court properly dismissed the action because Simon lacked standing to bring the action. Only "participants" and "beneficiaries" of ERISA employee benefit plans have standing to maintain a civil action to pursue claims under ERISA, and Simon does not qualify as either. *See Teagardener v. Republic-*

Franklin Inc. Pension Plan, 900 F.2d. 947, 951 (6th Cir. 1990). We decline to recognize an exception to this requirement for an assignee of a healthcare provider, for a healthcare provider who did not render the actual services at issue in the case, or on any other basis argued by Simon. *See Simon v. Value Behavioral Health Inc.*, 208 F.3d. 1073, 1081-82 (9th Cir. 2000); *Hermann Hosp. v. MEBA Med. & Benefits Plan*, 845 F.2d. 1286, 1289 (5th Cir. 1988).

Simon also lacked standing to pursue state law and common law claims because all claims presented in his complaint essentially arose from ERISA. In this situation, any state or common law claim is preempted by ERISA's statutory scheme even if the state law was not designed to affect employee benefit plans. *See* 29 U.S.C. § 1144(a); *Pilot Life Ins. Co. v. Dedeaus*, 481 U.S. 41, 47-48 (1987); *Daniel v. Eaton Corp.*, 839 F.2d. 263, 266 (6th Cir. 1988).

Finally, we reject Simon's argument that the district court erred by not permitting him to amend the complaint. A review of the record shows that the district court permitted Simon to file one amended complaint. Simon thereafter did not move again for leave to amend, nor attempt to file a second amended complaint. Consequently, the court had no duty to act sua sponte and grant Simon leave to file a second amended complaint.

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

Appendix B

Case No: 00-1680

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

STEPHEN SIMON, individually and as ultimate assignee of Humanistic Mental Health Foundation,

Plaintiff-Appellant.

v.

BELWITH INTERNATIONAL INC., Employee Benefit Plan; BABCOCK INDUSTRIES, INC., Group Health Plan; ELAINE DRURY, individually and as Plan Administrator; JANET HOLTON, individually and as Plan Administrator; FKI INDUSTRIES INC., individually and as Plan Administrator; GARY WARREN, individually and as Plan Administrator, BABCOCK INDUSTRIES INC.,

Defendants-Appellees

BEFORE: WELLFORD, RYAN, and SUHRHEINRICH; Circuit Judges

Upon consideration of the motion filed by the appellant to stay the mandate pending the filing of a Petition for Writ of

Certiorari,

It is ORDERED that the motion be, and it here is **DENIED.**

ENTERED BY ORDER OF THE COURT

_____

Leonard Green, Clerk

Appendix C

00-1680

FILED MAR 30 2001
LEONARD GREEN,
CLERK

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STEPHEN SIMON, INDIVIDUALLY AND AS ULTIMATE ASSIGNEE OF HUMANISTIC MENTAL HEALTH FOUNDATION,	)	ORDER
Plaintiff-Appellant,	)	
v.	)	
BELWITH INTERNATIONAL, INC., EMPLOYEE BENEFIT PLAN, ET AL.,	)	
Defendants-Appellees.	)	

BEFORE: WELLFORD, RYAN, and SUHRHEINRICH, Circuit Judges

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

Appendix C

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

_____

Leonard Green, Clerk

Appendix D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEPHEN SIMON,
Plaintiff,

Case No. 4:99 CV 127

v.

HON. RICHARD ALAN ENSLEN

BELWITH INTERNATIONAL, INC.,
Employee Benefit Plan,
BABCOCK INDUSTRIES, INC.
Group Health Plans;
ELAINE DRURY, individually and as
Plan Administrator;
JANET HOLTON, individually and as
Plan Administrator;
FKI INDUSTRIES INC;
GARY WARREN, individually and as
Plan Administrator;
and
BABCOCK INDUSTRIES, INC.,

Defendants,

_____/

JUDGMENT OF DISMISSAL

This matter is before the Court on Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

The complaint alleges that a patient identified as S.M.,

a participant or beneficiary of the Belwith employee benefit plan, was treated by health care provider Humanistic Mental Health Foundation ("Humanistic") in November 1991. Complaint at § 1. It is alleged that the Belwith plan failed to pay $2,450 for the health care Humanistic provided to S.M. Id. Humanistic assigned its claim against the Belwith plan to Plaintiff Stephen Simon, who brings this action to recover the $2,450. Id. at § 8.

The issue raised in this Motion is whether Mr. Simon has standing to assert claims assigned to him by a healthcare provider.

Only parties enumerated in the Employee Retirement Income Security Act ("ERISA") may sue to recover plan benefits. *See Franchise Tax Bd. V. Construction Vacation Trust for S. Cal.*, 463 U.s. 1, 27 (1983). Section 502(a)(1)(B) of ERISA authorizes benefit plan participants or beneficiaries to bring civil enforcement actions to pursue claims. 29 U.S.C. § 1132(a)(1)(B).[1] *See Teagardener v. Republic-Franklin Inc. Pension Plan*, 909 F.2d. 947 (6th Cir. 1990). Plaintiff is neither a participant nor a beneficiary of the ERISA plans here.

Some courts recognize a "derivative standing theory" and have allowed healthcare providers to bring ERISA claims. But Mr. Simon does not allege that he provided medical care to S.M.; instead he alleges that he acquired Humanistic's claim through a financial transaction. Complaint at § 26.

Mr. Simon brings suit on this claim as a third party assignee. When Mr. Simon brought a similar suit in California,

---

[1]A "participant" is defined as any employee who is eligible to receive a benefit under the benefit plan. 29 U.S.C. § 1002(7). A "beneficiary" is defined as any person designated by a participant of the benefit plan who is entitled to benefits under the benefit plan. 29 U.S.C. § 1002(8).

the District Court there determined that no court has allowed a third party assignee to bring ERISA claims.[2] *Simon v. Value Behavioral Health Inc.*, 955 F. Supp. 93, 95 (C.D. Cal. 1997). Affirming that decision, the Ninth Circuit Court of Appeals stated, "[o]ur review of the statutory text of Section 502, relevant precedent, and the legislative history of ERISA also revealed no indication that Congress intended for plaintiffs in Simon's position to sue under ERISA." *Simon v. Value Behavioral Health, Inc.* 2000 WL 282655 at *4 (9th Cir. March 17, 2000). Although the Sixth Circuit has not addressed this issue directly, it has construed ERISA standing narrowly. *See Teagardener*, 909 f.2d at 954 (Holding that former plan members did not have standing because they were no longer participant or beneficiaries under ERISA); *Crawford v. Roane*, 53 F.3d 750 (6th Cir. 1995)(Orphans are not beneficiaries with standing to bring action under ERISA). There is no reason to believe that the Sixth Circuit would take an unprecedented reading of ERISA standing here. This Court holds that a third party who is not a healthcare provider lacks standing to sue on an assigned claim for the payment of ERISA benefits.

Since all of Mr. Simon's claims, including his claim for breach of fiduciary duty, arise from ERISA, and Mr. Simon lacks standing to pursue claims under ERISA, Mr. Simon fails to allege a claim upon which relief can be granted.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (Dkts. 6 and 12) is **GRANTED**.

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[2]The Court does not address the issue of res judicata because it is not necessary to the result and the record of the actions taken by the District Court of the Central District of California is unclear.

Appendix D

Dated in Kalamazoo, MI

May 15, 2000

RICHARD ALAN ENSLEN

Supreme Court, U.S.
FILED
SEP 18 2001
CLERK

(2)

No. 01-272

In The

Supreme Court of the United States

STEPHEN SIMON,

Petitioner,

v.

BELWITH INTERNATIONAL, INC., EMPLOYEE BENEFIT PLAN, BABCOCK INDUSTRIES INC. GROUP HEALTH PLAN, BABCOCK INDUSTRIES INC., FKI INDUSTRIES INC., ELAINE DRURY, individually and as Plan Administrator, JANET HOLTON, individually and as Plan Administrator, GARRIE WARREN, individually and as Plan Administrator,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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I. CASE HISTORY

Petitioner brought an action in the United States District Court for the Western District of Michigan in which he raised claims against respondents arising under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. The District Court correctly dismissed petitioner's claims for failure to state a claim upon which relief can be granted because petitioner is not a "participant," "beneficiary" or a "health care provider" assignee as defined by ERISA. He therefore lacks standing to maintain this action. The District Court dismissed petitioner's claims, and the Sixth Circuit affirmed the dismissal. The Sixth Circuit also denied petitioner's Petition for Rehearing En Banc and his Motion for Stay of Mandate.

II. PETITIONER'S STATEMENT OF THE CASE CONTAINED MISSTATEMENTS.

A. Petitioner Erroneously Stated That The Sixth Circuit's Ruling In This Case Established A Split Among The Circuits.

Petitioner asserts that the Sixth Circuit's reliance on *Simon v. Value Behavioral Health, Inc.*, 208 F.3d 1073 (9th Cir. 2000), *cert. denied*, 531 U.S. 1104 (2001), "established a split amongst the circuits and, as such, is ripe for consideration before Supreme Court of the United States." By petitioner's own description of the reliance and certainly as indicated by the Sixth Circuit opinion, the Sixth Circuit decision in this case is consistent with the Simon Ninth Circuit case so that no split, but rather synergy, exists. As discussed more fully below, the law across the circuits is

consistent that a third party, non-health care provider assignee (and specifically, Stephen Simon) does not have standing to bring ERISA claims.

B. The District Court Appropriately Considered Petitioner's Pleadings And Allegations.

Petitioner claims that the lower courts "failed or refused to acknowledge," "ignored" and "distorted" petitioner's allegations and the facts of the case. In addition, petitioner claims that the District Court failed to extend liberal construction to his pro se pleadings. These claims of District Court and Sixth Circuit misconduct by petitioner amount to no more than that those Courts did not agree with him.

The District Court appropriately considered all facts in the light most favorable to petitioner as the non-moving party. In fact, the District Court accepted petitioner's primary assertion as true that he was an assignee of claims against respondents. The District Court determined however as a matter of law that the assignment did not result in standing to bring the ERISA claims. Accordingly, the District Court did construe petitioner's pleadings liberally and did accept petitioner's factual allegations as true, but found them insufficient to state a claim. The Sixth Circuit similarly considered petitioner's allegations and reached the same legal conclusion that petitioner lacks standing.

Other than assertions that the Courts did not recognize his assignment and therefore his standing to bring ERISA claims, petitioner's only specific argument of lower courts' alleged distortion of the record is based on

the Sixth Circuit's statement that the "District Court permitted Simon to file one amended complaint." Petitioner claims that he filed the amended complaint without Court intervention so that the "permitted" language in the Sixth Circuit opinion is a distortion of the record. Petitioner filed the First Amended Complaint prior to service of the complaint so that a motion for leave to amend was not required. Fed R. Civ. P. 15(a). However, the Court administered this case pursuant to the Federal Rules of Civil Procedure and therefore permitted the amendment of complaints through application of the rules. Furthermore, the fact remains, and the Sixth Circuit was attempting to emphasize, that petitioner did amend his complaint.

Even more important but omitted by Petitioner is the further reasoning of the Sixth Circuit in rejecting Petitioner's claimed error by the District Court in not permitting further amendment. The Sixth Circuit held:

> Simon thereafter did not move again for leave to amend, nor attempt to file a second amended complaint. Consequently, the court had no duty to act sua sponte and grant Simon leave to file a second amended complaint.

Simon v. Belwith International, Inc., No. 00-1680 at 2 (6th Cir. 2001). The Sixth Circuit therefore rejected petitioner's claimed error of denying further amendments due to petitioner's failure to request or attempt to file further amendments, and not because an amended complaint had been previously permitted.

III. REASONS FOR DENYING THE PETITION

A. No Conflict Among The Circuits Exists To Support The Exercise Of Certiorari Jurisdiction.

Petitioner cites an intra-circuit conflict between *"Simon vs. Value"* and *"Simon vs. Davidowitz"* as the sole reason for granting a writ of certiorari in this matter. First, the alleged conflict asserted by petitioner does not even involve this case, but rather involves two 9th Circuit cases.[1] The alleged conflict not involving this case cannot support the exercise of certiorari in this matter.

In addition, the **intra-circuit** conflict alleged does not support the exercise of certiorari jurisdiction. Rule 10 of the Supreme Court Rules indicates the character of reasons considered by the Court in determining whether to grant a writ of certiorari. Concerning conflicts between courts, Rule 10 states that the Court considers granting Certiorari if "a United States court of appeals has entered a decision **in conflict with *another* United States court of appeals on the same important matter.**" Sup. Ct. R. 10(a) (emphasis added). At most, petitioner asserts that there is a conflict among decisions issued by **the same** court of appeals which is not a basis for granting the Petition for Writ of Certiorari.

Furthermore, even considering the cases to which petitioner appears to cite,[2] there is no conflict between the cases. Rather, the cases involved different facts but reached the

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[1] Petitioner previously sought and was denied certiorari in the *Simon v. Value Behavioral Health*, 531 U.S. 1104 (2001).

[2] It appears that Petitioner has misidentified *Davidowitz v. Delta Dental Plan, Inc.*, 946 F.2d 1478 (9th Cir. 1991) as *"Simon vs. Davidowitz."*

same conclusion that the assignees did not have standing to pursue ERISA claims. Similar to this case, the *Value Behavorial Health* case involved claims by Stephen Simon as a third-party, non-health care provider assignee. *Simon v. Value Behavorial Health*, 208 F.2d 1073. However, *Davidowitz* involved claims by health care provider assignees. *Davidowitz*, 946 F.2d at 1477. In *Value Behavioral Health*, the Ninth Circuit held that non-health care provider assignees did not have standing to pursue ERISA claims. *Value Behavorial Health, supra*. In *Davidowitz*, the Ninth Circuit held that health care providers were not valid assignees due to a specific prohibition of assignments by plan documents and therefore did not have standing to pursue ERISA claims. *Davidowitz* at 1481. Accordingly, the *Value Behavioral Health* and *Davidowitz* cases do not conflict and do not support the exercise of certiorari jurisdiction.

B. Petitioner's Questions Presented Also Fail To Support Certiorari.

The petitioner's argumentative questions presented also fail to set forth any basis for granting a writ of certiorari. The questions presented by petitioner appear to be primarily claims that the District Court erred in finding he had no standing to bring assigned ERISA benefit claims (Questions I-VI, VII-X). Petitioner also stated a question presented concerning the District Court's retention of jurisdiction regardless of whether petitioner is determined real party in interest. In addition, petitioner challenged the lower courts' refusal to

permit amendment of pleadings and alleged misstatement and distortion of facts.

None of these issues stated within the Questions Presented are supported in the Petition for Writ of Certiorari. Even if the issues were supported, these questions show only that petitioner is seeking a further hearing after defeat in the Sixth Circuit. Petitioner has made no showing of any decision on any important federal question in conflict with a decision of a state court of last resort, or departure from accepted judicial procedure sufficient to require supervision by this Court. Accordingly, none of the reasons set forth in Rule 10 of the Supreme Court Rules, nor any reasons of similar character, are set forth within the questions presented or the petition to support certiorari.

C. The District Court And The Sixth Circuit Properly Applied Statutory Provisions And Well-Established Case Law.

The District Court and the Sixth Circuit properly determined that petitioner, as the assignee of providers who were in turn assignees of the plan participants or beneficiaries, was not a person authorized to sue for benefits by 29 U.S.C. § 1132(a)(1)(B) (ERISA). ERISA § 1132 limits the persons authorized to bring a civil action to recover benefits to plan "participants" and "beneficiaries." Petitioner was neither. Nor was he a "health care provider" assignee with standing to sue. *Simon v. Value Behavioral Health*, 208 F.3d 1073. Therefore, both the District and the 6th Circuit correctly ruled that petitioner

had no standing as an assignee to pursue his claims against Respondents.

CONCLUSION

Petitioner has presented no legitimate basis to warrant review by this Court. Respondents respectfully request that petitioner's Petition For Writ of Certiorari be denied.

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Respectfully submitted,

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